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The ADA Amendments Act of 2008

On September 25, 2008 the American with Disabilities Act (ADA) Amendments Act of 2008 (ADAA) was passed and went into effect January 1, 2009. This significantly increased the margin of protection available under the Americans with Disabilities Act of 1990. The Act emphasizes that the definition of disability should be interpreted in favor of broad coverage of individuals to the maximum extent permitted by the terms of the ADA.

The Act makes important changes to the definition of the term "disability" by rejecting the holdings in several Supreme Court decisions and portions of the Equal Employment Opportunity Commission's (EEOC) ADA regulations. The effect of these changes is to make it easier for an individual seeking protection under the ADA to establish that one has a disability within the meaning of the ADA.

The 2008 Act retains the ADA's basic definition of "disability" as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. The Act changes the way that these statutory terms should be interpreted in several ways. The Act:

- Directs EEOC to revise that portion of its regulations defining the term "substantially limits";
- Expands the definition of "major life activities" by including additional activities that the EEOC has not specifically recognized (e.g. reading, bending, and communicating); and major bodily functions

(e.g., "functions of the immune system, normal cell growth, digestive, bowels, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions");

- States that mitigating measures, other than "ordinary eyeglasses or contact lenses", shall not be considered in assessing whether an individual has a disability;
- Clarifies that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active;
- Changes the definition of "regarded as" so that it no longer requires a showing that the employer perceived the individual to be substantially limited in a major life activity, and instead says that an applicant or employee is "regarded as" disabled if he or she is subject to an action prohibited by the ADA (e.g. failure to hire or termination) based on an impairment that is not transitory and minor;
- Provides that individuals covered only under the "regarded as" branch are not entitled to reasonable accommodation.

The EEOC is evaluating the impact of these changes on its enforcement guidance and other publications addressing the ADA. Despite the EEOC's evaluation of its impact, it is generally thought that the changes brought by the ADAA of 2008 broaden the scope of protection for individuals bringing an action under the ADA.

More on the ADA Amendments Act of 2008 to follow in next month's newsletter

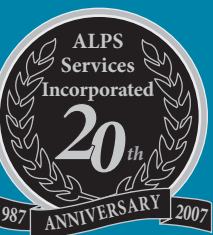
Drug-Free Workplace Self Quiz

1. Drug and alcohol abuse has been found to correlate with:
 - A. Increased use of healthcare dollars
 - B. Workplace violence
 - C. Domestic violence
 - D. Workplace theft
 - E. All of the above
2. While on a 30 minute lunch, an employee drinks two bottles of beer. For how long after his return from lunch will this employee have a measurable blood alcohol level?
 - A. About 30 minutes
 - B. About 60 minutes
 - C. About 120 minutes
 - D. His blood alcohol will probably have fallen to zero by the end of his lunch break.
 - E. It depends upon the employee's body weight.
3. The only way to legally obtain and use marijuana in Ohio is:
 - A. Via a physician in a state that permits medical marijuana usage.
 - B. Via a Federal research program on the use of marijuana to treat glaucoma, an eye disease.
 - C. Via "Chronic Candy", a marijuana flavored candy increasingly popular with young people.
 - D. Via the practice of certain Native American rituals that the Ohio Supreme Court has ruled permissible.
 - E. None of the above
4. If you fired an employee due to a positive drug test and you are contacted in the future by a prospective employer of the former employee, Ohio law requires that you divulge the individual's drug testing history.
 - A. True
 - B. False
5. The Americans with Disabilities Act (ADA) contains protections that could potentially restrict an employer's actions against an employee who tests positively for cocaine.
 - A. True
 - B. False

View quiz answers at the end of this newsletter (following Humor Corner). This quiz is the fourth part of a four-part series on a Drug-Free Workplace, designed to keep you up to date on maintaining a Drug-Free Workplace. Previous questions can be found in the January, February, & March 2009 Riskwatch Newsletters.

CMS

Centers For Medicare & Medicaid Services





YOU AND YOUR HEALTH

Heart Disease....

What's Your Real Cholesterol Risk?

Just looking at your total cholesterol number won't necessarily tell you if you're at risk for heart and blood vessel disease. Here's one way to get a clearer picture of what your cholesterol numbers really mean in terms of heart disease risk.

First, figure out your "cholesterol ratio" (you'll need the HDL- your "good" cholesterol- and total cholesterol numbers from your last blood test):

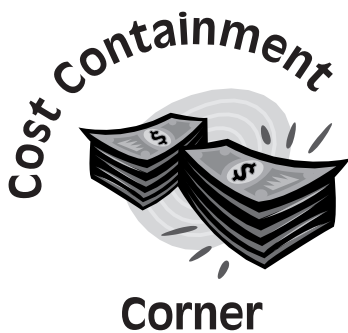
$$\text{Total cholesterol divided by HDL cholesterol} = \text{Cholesterol ratio}$$

Now, use the chart below to assess your risk. For example, if your total cholesterol is 200 and your HDL is 45, your ratio would be 4.4 and your heart disease risk would be about average.

Aim for a "below average" or lower risk.

What Your Cholesterol Ratio Means

<u>Ratio</u>	<u>Heart Disease Risk</u>
6.0	High
5.0	Above average
4.5	Average
4.0	Below average
3.0	Low



Light-Duty Positions Must be Temporary

Return-to-work programs include temporary light or alternative duty jobs designed to help in the employee's transition back to his or her original job. Don't let these jobs become permanent.

Carefully design your return-to-work program and monitor employees in the program. The alternate duty jobs should be for a specified

reasonable time period – reevaluate employees still on the alternate job beyond that period. Ninety days is considered by some professionals to be the longest time period allowed for alternate duty. By that time, the employee should be back to full duty or the case should be reviewed for some other form of resolution.



Every case is different, of course, and rigid guidelines may not be appropriate. The key point is to monitor the employee's progress and make adjustments. Don't let employees languish in alternate jobs.

Your Back Starts Here

A GUIDE TO YOUR NECK

Your neck has a much wider range of motion than the rest of your spine and must also carry a big load: your skull. Because of this, it's easy to injure or overuse your neck.

Your Neck at Its Best

A healthy neck has a slight forward curve that's in balance with the other curves of your spine. This balance distributes your body weight evenly and protects your muscles and ligaments from pulls and strains.

Your neck can move forward and back, tilt from side to side and rotate in both directions, all while supporting your skull.

Strength and Flexibility

Your neck is made up of seven small bones called cervical vertebrae. Flexible but strong, they support your skull and hold your head erect. This column of vertebrae also forms a canal to protect your spinal cord.

Your neck muscles control the movements of your head and tongue. For extra support, several deep muscles of the back and shoulders extend into the neck region.

Regularly exercising the muscles of your neck keeps them strong and flexible. Good posture—your head balanced on top of your neck's curve—protects the bones and discs from wear and tear.



Nothing's Too Good for Your Neck

When it comes to back health, your neck is the top of the line.

To protect your neck:

- ▶ Keep your posture in balance—whether you're sitting, standing or lying down.
- ▶ Do exercises for neck strength and flexibility.
- ▶ Use a headrest in your car and wear proper head protection during sports.

Common Causes of Neck Problems

- ▶ **cradling a telephone handset between your head and shoulder**—This position is hard on your neck joints and shoulder muscles. Newer telephones with smaller handsets can make the problem worse. Use an operator's headset, a speakerphone or shoulder rest, and switch sides every couple of minutes.
- ▶ **propping up your head with pillows to read in bed**—Bending your neck at an angle causes wear and tear on your vertebrae. Sit up straight with a pillow under your knees to relieve pressure on your lower back.
- ▶ **sleeping with the wrong pillow**—Your pillow should support your neck without lifting your head at a sharp angle.

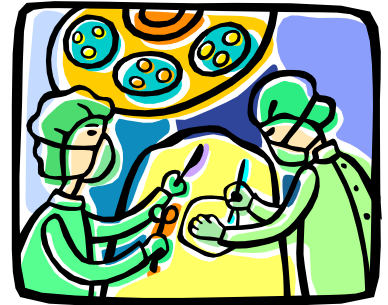


Humor Corner

Things You Don't Want to Hear During Surgery

- Oops!
- Has anyone seen my watch?
- That was some party last night. I can't remember when I've been that drunk.
- Darn! Page 46 of this manual is missing!
- Well this book doesn't say that...What edition is your manual?
- OK, now take a picture from this angle. This is truly a freak of nature.
- Better save that. We'll need it for the autopsy.
- Come back with that! Bad Dog!
- Wait a minute, if this is his spleen, then what's that?
- Hand me that...uh...that uh...thingie.
- If I can just remember how they did this on ER last week.
- Hey, has anyone ever survived 500 ml of this stuff before?
- Darn, there go the lights again.
- Ya know, there's big money in kidneys. Heck, the guy's got two of 'em.
- Everybody stand back! I lost my contact lens!
- Could you stop that thing from beating; it's throwing my concentration off.
- I wish I hadn't forgotten my glasses.

- Well folks, this will be an experiment for all of us.
- Sterile, schmeril. The floor's clean, right?
- What do you mean he wasn't in for a sex change!
- This patient has already has some kids, am I correct?
- Nurse, did this patient sign the organ donation card?
- Don't worry. I think it is sharp enough.
- What do you mean "You want a divorce"!
- I don't know what it is, but hurry up and pack it in ice.
- Let's hurry. I don't want to miss "Bay Watch"
- That laughing gas stuff is pretty cool. Can I have some more of that?
- Hey Charlie, unzip the bag on that one, he's still moving.
- Did the doctor know he would look like that afterwards?
- Of course I've performed this operation before... Nurse..?
- FIRE! FIRE! Everyone get out!



Answers from page 1: 1) D 2) C 3) E 4) B 5) B

The contents of this newsletter are intended to be treated merely as newsworthy articles that interest the general business community. Any information contained herein is not to be relied upon as legal or medical advice. If you should have legal or medical questions, we suggest you contact your attorney or physician.

ASI Comprehensive Disability & Workers' Compensation Services takes a Total Partnership Approach to meeting and exceeding your expectations. We offer a diverse range of services including:

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- Fraud Detection & Investigation
- Independent Medical Exams

- Subrogation Investigation & Recovery
- Premium Discount Program
- Medical Bill Review, Payment & Processing
- GSA Federal Supply Schedule

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